

AMENDED IN SENATE MAY 6, 2008  
AMENDED IN ASSEMBLY MARCH 24, 2008  
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2343**

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**Introduced by Assembly Member Caballero**

February 21, 2008

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An act *to amend Section 24011 of the Government Code, and to amend Sections 15680 and 15688 of, to add Sections 1456.2 and 7605 to, and to repeal and add Section 15660.5 of, the Probate Code, relating to public administrators and conservators.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as amended, Caballero. Public administrators and conservators.

(1) Existing law requires the public guardian of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

This bill would require, on or before January 1, 2010, that the public conservator and administrator of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law provides a method for filling a vacancy if a trust has no trustee or the trust requires a vacancy in the office of cotrustee to be filled. Existing law provides that, if other specified methods of appointing a trustee to fill a vacancy fail, a court may appoint a trustee

on the petition of any interested person. Existing law prohibits the public guardian being appointed as a trustee unless the court finds, on reasonable inquiry, that no other qualified person is willing to act as trustee. Existing law creates in each county the office of public administrator.

This bill would permit a public guardian or public administrator to be appointed as a trustee only if certain conditions are met. The bill would prohibit appointment of a public administrator unless the court finds, after reasonable inquiry, that no other qualified person is willing to act as trustee. The bill would prohibit the public administrator from being appointed unless, at the time of the appointment, the entire trust is to be distributed outright or he or she consents. The bill would require that the public guardian or public administrator receive notice prior to the hearing to appoint him or her as trustee, or prior to appointment as a temporary trustee, and would prohibit appointment of the public guardian or public administrator as a cotrustee without his or her consent. The bill would specify the expenses and compensation that a public guardian, public administrator, and his or her attorney are to receive for acting as a trustee, under specified circumstances, including a minimum compensation of \$1,000, to be paid to the *public guardian or public administrator* and his or her attorney. The bill would require that the public administrator receive a bond fee, calculated pursuant to a specified method, to be deposited in the country treasury.

*(3) Existing law authorizes the boards of supervisors of specified counties to provide, by ordinance, that the public administrator be appointed by the board. Existing law also authorizes the boards of supervisors of specified counties, by ordinance, to appoint the same person to the offices of public administrator and public guardian.*

*Existing law authorizes the board of supervisors, by ordinance, to consolidate the duties of certain county offices, including the treasurer and public administrator.*

*This bill would authorize the Board of Supervisors of Ventura County to provide, by ordinance, that the public administrator be appointed by the board, and to authorize the board to appoint the same person to the offices of public administrator and public guardian. The bill would also authorize the Board of Supervisors of Ventura County to separate the consolidated offices of public administrator and treasurer in order to consolidate the offices of public administrator and public guardian, as specified.*

~~(3)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 24011 of the Government Code is  
2     amended to read:

3     24011. Notwithstanding the provisions of Section 24009:

4     (a) The Boards of Supervisors of Glenn County, *Lake County*,  
5     Lassen County, Madera County, Mendocino County, Monterey  
6     County, Napa County, Solano County, Sonoma County, Trinity  
7     County, Tuolumne County, and ~~Lake Ventura~~ County may, by  
8     ordinance, provide that the public administrator shall be appointed  
9     by the board.

10    (b) The Boards of Supervisors of *Lake County*, Madera County,  
11    Mendocino County, Napa County, Trinity County, *and* Tuolumne  
12    County, ~~and Lake County~~ may appoint the same person to the  
13    offices of public administrator, veteran service officer, and public  
14    guardian. The Boards of Supervisors of Glenn County, Lassen  
15    County, Monterey County, Solano County, ~~and~~ Sonoma County,  
16    *and Ventura County*, may, by ordinance, appoint the same person  
17    to the offices of public administrator and public guardian.

18    (c) The Boards of Supervisors of Glenn County, *Lake County*,  
19    Lassen County, Madera County, Mendocino County, Napa County,  
20    Trinity County, *and* Tuolumne County, ~~and Lake County~~ may  
21    separate the consolidated offices of district attorney and public  
22    administrator at any time in order to make the appointments  
23    permitted by this section. Upon approval by the board of  
24    supervisors, the officer elected to these offices at any time may  
25    resign, or decline to qualify for, the office of public administrator  
26    without resigning from, or declining to qualify for, the office of  
27    district attorney.

1     (d) *The Board of Supervisors of Ventura County may separate*  
2     *the consolidated office of public administrator from the office of*  
3     *treasurer, in order to make the appointment authorized by this*  
4     *section. Upon approval by the board of supervisors, the officer*  
5     *elected to these offices at any time may resign, or decline to qualify*  
6     *for, the office of public administrator without resigning from, or*  
7     *declining to qualify for, the office of treasurer.*

8     ~~SECTION 1.~~

9     SEC. 2. Section 1456.2 is added to the Probate Code, to read:

10    1456.2. On or before January 1, 2010, the public conservator  
11    shall comply with the continuing education requirements that are  
12    established by the California State Association of Public  
13    Administrators, Public Guardians, and Public Conservators.

14    ~~SEC. 2.~~

15    SEC. 3. Section 7605 is added to the Probate Code, to read:

16    7605. On or before January 1, 2010, the public administrator  
17    shall comply with the continuing education requirements that are  
18    established by the California State Association of Public  
19    Administrators, Public Guardians, and Public Conservators.

20    ~~SEC. 3.~~

21    SEC. 4. Section 15660.5 of the Probate Code is repealed.

22    ~~SEC. 4.~~

23    SEC. 5. Section 15660.5 is added to the Probate Code, to read:

24    15660.5. (a) The court may appoint as trustee of a trust the  
25    public guardian or public administrator of the county in which the  
26    matter is pending subject to the following requirements:

27    (1) Neither the public guardian nor the public administrator  
28    shall be appointed as trustee unless the court finds, after reasonable  
29    inquiry, that no other qualified person is willing to act as trustee  
30    or the public guardian, public administrator, or his or her  
31    representative consents.

32    (2) The public administrator shall not be appointed as trustee  
33    unless either of the following is true:

34    (A) At the time of the appointment and pursuant to the terms  
35    of the trust, the entire trust is then to be distributed outright.

36    (B) The public administrator consents.

37    (3) Neither the public guardian ~~or~~ nor the public administrator  
38    shall be appointed as a cotrustee unless the public guardian, public  
39    conservator administrator, or his or her representative consents.

1 (4) Neither the public guardian nor the public administrator  
2 shall be appointed as general trustee without a hearing and notice  
3 to the ~~agency~~ *public guardian or public administrator, or his or*  
4 *her representative*, and other interested persons as provided in  
5 Section 17203.

6 (5) Neither the public guardian nor the public administrator  
7 shall be appointed as temporary trustee without receiving notice  
8 of hearing as provided in Section 1220. The court shall not waive  
9 this notice of hearing, but may shorten the time for notice upon a  
10 finding of good cause.

11 (b) (1) The public administrator shall not be appointed as trustee  
12 under subparagraph (A) of paragraph (2) of subdivision (a) if, after  
13 receiving notice as required by this section, the public administrator  
14 files a written certification with the court that the public  
15 administrator is unable to provide the level of services needed to  
16 properly fulfill the obligations of a trustee of the trust.

17 (2) If the public administrator has been appointed as trustee  
18 without notice as required in paragraph ~~(3) or (4)~~ (4) or (5) of  
19 subdivision (a), and the public administrator files a written  
20 certification with the court that he or she is unable to provide the  
21 level of services needed to properly fulfill the obligations of a  
22 trustee of the trust, this shall be good cause for the public  
23 administrator to be relieved as trustee.

24 (c) The order of appointment shall provide for an annual bond  
25 fee as described in Section 15688.

26 ~~SEC. 5:~~

27 *SEC. 6.* Section 15680 of the Probate Code is amended to read:

28 15680. (a) Subject to subdivision (b), and except as provided  
29 in Section 15688, if the trust instrument provides for the trustee's  
30 compensation, the trustee is entitled to be compensated in  
31 accordance with the trust instrument.

32 (b) Upon proper showing, the court may fix or allow greater or  
33 lesser compensation than could be allowed under the terms of the  
34 trust in any of the following circumstances:

35 (1) Where the duties of the trustee are substantially different  
36 from those contemplated when the trust was created.

37 (2) Where the compensation in accordance with the terms of  
38 the trust would be inequitable or unreasonably low or high.

39 (3) In extraordinary circumstances calling for equitable relief.

1 (c) An order fixing or allowing greater or lesser compensation  
2 under subdivision (b) applies only prospectively to actions taken  
3 in administration of the trust after the order is made.

4 ~~SEC. 6.~~

5 *SEC. 7.* Section 15688 of the Probate Code is amended to read:

6 15688. Notwithstanding any other provision of this article and  
7 the terms of the trust, a public guardian or public administrator  
8 who is appointed as a trustee of a trust pursuant to Section 15660.5  
9 shall be paid from the trust property for all of the following:

10 (a) Reasonable expenses incurred in the administration of the  
11 trust, including filing and processing services of the clerk of the  
12 court and expenses incurred by the attorney for the public guardian  
13 or public administrator.

14 (b) Compensation for services of the public guardian or public  
15 administrator and the attorney of the public guardian or public  
16 administrator, as follows:

17 (1) If the public guardian or public administrator is appointed  
18 as trustee of a trust that provides for the outright distribution of  
19 the entire trust estate, compensation for the public guardian or  
20 public administrator, and any attorney for the public guardian or  
21 public administrator, shall be calculated as that provided to a  
22 personal representative and attorney pursuant to Part 7  
23 (commencing with Section 10800) of Division 7, based on the fair  
24 market value of the assets as of the date of the appointment,  
25 provided that the minimum amount of compensation for *the public*  
26 *guardian or the public administrator and the attorney for the public*  
27 *administrator shall be one thousand dollars (\$1,000). Additionally,*  
28 *the minimum amount of compensation for the attorney for the*  
29 *public guardian or the public administrator, if any, shall be one*  
30 *thousand dollars (\$1,000).*

31 (2) For a trust other than that described in paragraph (1), the  
32 public guardian or public administrator shall be compensated as  
33 provided in Section 15680. Compensation shall be consistent with  
34 compensation allowed for professional fiduciaries or corporate  
35 fiduciaries providing comparable services.

36 (3) Except as provided in paragraph (1), reasonable  
37 compensation for the attorney for the public guardian or public  
38 administrator.

39 (c) An annual bond fee in the amount of twenty-five dollars  
40 (\$25) plus one-fourth of 1 percent of the amount of the trust assets

greater than ten thousand dollars (\$10,000). The amount charged shall be deposited in the county treasury.

*SEC. 8. Due to the unique circumstances of Ventura County, with respect to the reorganization of their county offices, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Section 1 of this act is necessarily applicable only to Ventura County.*

~~SEC. 7.~~

*SEC. 9.* If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.